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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/527,243 | 10/04/2005 | Sjoerd Gerard Vrijburg | 4828-050784 | 2866 |

28289 7590 03/17/2011
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| EXAMINER |
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PATEL, TAJASH D

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| ART UNIT | PAPER NUMBER |
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3765

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| NOTIFICATION DATE | DELIVERY MODE |
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03/17/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@webblaw.com

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/527,243 | Applicant(s) VRIJBURG, SJOERD GERARD | |
| | Examiner Tejash Patel | Art Unit 3765 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/23/10 (RCE).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-21 and 23-32 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 17-21, 23-28 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vattes et al. (US 7,392,601).

Vattes et al. (hereinafter Vattes) discloses a device dimensioned to be worn about the leg including a protective body (736) with under and upper sides being made of a elastic rubberized sleeve, col. 24, lines 45-64 that has a recess for placing on the front side of a leg as shown in figure 13A. The protective body wholly encloses the leg as seen in the horizontal direction with the underside defining a recess along a bottom edge through which the foot is inserted therethrough and is positioned adjacent to the skin with an exterior surface thereof defining an irritable snug fit surface as also shown in figure 13A. Further, the body extends above the foot in a vertical direction as shown in figure 13A. Also, at least two support members (706) are positioned on inner side of the body and substantially arranged on either side of the front side thereof as shown in figure 13E.

It would have been obvious to one skilled in the art at the time the invention was made to recognize that elastic rubberized sleeve of Vattes will be form fitting while preventing irritation

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to the skin when the device is worn or depending on the end use thereof. Furthermore, it would have been obvious to one skilled in the art that the protective body of Vattes having the irritable snug fit surface will protect the user when the device is worn within footwear such as shoe or boots to prevent abrasion or as required for a particular application thereof.

With regard to claim 23, it is obvious that the protective body of Vattes has varying thickness due to stretchable properties of the elastic rubberized material.

With regard to claims 25-28, it is obvious to one skilled in the art the elastic protective body of Vattes can be made of any synthetic resilient material but not limited thereto plastics, foam, neoprene, etc so that the device conforms and articulates with the movement of the leg when worn or depending on availability of material at the time the device is made.

Further, with regard to claim 32, it would have been obvious to provide the protective body of Pierce can be provided with indicia or marking thereon as a matter of design choice or depending on the end use thereof.

3. Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vattes in view of Bruce (US 1,335,273). Vattes discloses the invention as set forth above except for showing the device having fastening means that fastened in substantially cylindrical form.

Bruce discloses a device having a rubberized fabric (33,24), page 3, col. 2, lines 127-130 being attached by fastening means (48) in a cylindrical form as shown in figures 1 and 2.

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It would have been obvious to one skilled in the art at the time the invention was made to provide the device of Vattes with fastening means that fastened in substantially cylindrical form as taught by Bruce so that the device can be donned or doffed as required. Further, it is obvious that the device of Vattes when viewed with Bruce having fastening means can include snaps, hook and loop material, etc since such fasteners are considered equivalent in the art.

Response to Amendment

4. The amendment and arguments filed on August 23, 2010 in Request for Continued Examination (RCE) has been considered. In view of such, the 112-2nd rejection has been withdrawn and a newly discovered prior art has been applied and the arguments are moot.

Allowable Subject Matter

5. Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (571) 273-8300.

March 10, 2011

/Tejash Patel/
Primary Examiner
AU 3765